

ACKNOWLEDGEMENT

A GUIDE TO EMPLOYMENT IN SARAWAK

BY

TAN GAKE HUA PBK



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Pusat Khidmat Maklumat Sarawak
UNIVERSITI MALAYSIA SARAWAK

A GUIDE TO EMPLOYMENT IN SARAWAK

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Pengurusan Seri Subur PLT
Suite 5A, Level 6, Menara MAA
Lot 86, Section 53, Jalan Central Timur
93300 Kuching, Sarawak, Malaysia

Email: gakehua@gmail.com / gakehua_tan@hotmail.com

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The author wishes to emphasise that while all efforts were made to provide accurate information on the subject matters covered and to check the accuracy of this publication, the author accepts no responsibility for any error, omission or damages, if any, arising from the use of the information in this book.

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DEDICATION

To my husband, Casimir Wong Kie Chung and my three children, Marcus, Michelle and Michael, for their perseverance and support.

ACKNOWLEDGEMENT

The author wishes to acknowledge:

- a. the officers and staff of the Department of Labour Sarawak, both past and present for their assistance, input and support during her 33 years service with the Department as well as after her retirement;
- b. the officers and staff of the Department of Labour Peninsular Malaysia for the two years of great working experience and for the opportunity to get to know the labour laws applicable in Peninsular Malaysia prior to the amendments to the Labour Ordinance of Sarawak;
- c. the officers and staff of the Ministry of Human Resources Malaysia for the opportunity to learn in depth the policy making and implementation process at the Federal level during her two years service in Putrajaya;
- d. the assistance from Mr. Chua Ah Ley, the former Deputy Director of Labour, Negeri Sembilan, who is a wellspring of knowledge and information;
- e. Datuk Amar Wilson Baya Dandot, the former State Secretary of Sarawak who was instrumental for bringing her into the State Civil Service at the Chief Minister's Department on a contract basis, thus providing her the opportunity for an intimate insight into the machinery of the State and to contribute to the making of the State's policy on labour and immigration matters; and
- f. last but not least, Yang Berhormat Tan Sri Datuk Amar Haji Mohamad Morshidi Bin Abdul Ghani, the present State Secretary of Sarawak for the mentoring, advice and support throughout her five years in the Sarawak State Civil Service and for honouring her with the Forward to this Guide.

BIODATA OF AUTHOR

The author, Tan Gake Hua is presently a consultant on human resources in Sarawak as well as providing training and education on matters related to the provisions of the Labour Ordinance of Sarawak, Sabah Labour Ordinance and Employment Act 1955 as well as on industrial relations matters.

She is a certified Trainer and her company, Pengurusan Seri Subur PLT is a registered Training Provider under the Human Resources Development Fund, Malaysia.

She retired as the Director of Labour Sarawak in 2007 after serving the Government for 33 years, two of which were as the Deputy Director General of the Department of Labour Peninsular Malaysia. Upon her retirement, she was appointed as a Special Administrative Officer in the Chief Minister's Department, Sarawak for a total of five years on a contract basis.

She was directly involved in the discussions on the proposed amendments to the Labour Ordinance of Sarawak from the 1980's until its ultimate amendment in 2004.

Her involvement in the implementation, training and enforcement of the various labour laws applicable in Sarawak and in Peninsular Malaysia has made her very conversant with the said laws.

The author is a graduate of Social Science from the University of Science Malaysia, Penang. She had also obtained a Certificate of Proficiency on Cross-cultural Management, Employment Relations in International and Comparative Perspectives and Human Resource Management from the University of Auckland, New Zealand in 1997 and had attended the Employment and Labour Market Policies in Developing Countries training programme organised by the International Labour Organisation at its International Training Centre in Turin in 2003. She has also received training in Mediation Theory & Practice from the University of South Australia in 2004.

FORWARD

It is the duty and responsibility of any government and its administration to ensure the sustained development of its economy. Towards this objective, it has to ensure that all parties, especially the employers and employees in the private sector are harmoniously working towards the achievement of these economic goals.

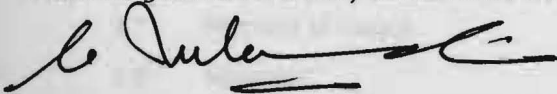
The State Government of Sarawak is currently embarking on unprecedented economic development to bring employment opportunities and to increase the income levels of its populace. The State's focus on developing renewable energy is bearing the expected results as more and more heavy industries are attracted to Sarawak. These local and foreign investors are providing many employment opportunities as well as many spinoffs in the local economy.

The Labour Ordinance (Sarawak Cap. 76) has been the guiding principle governing the relationship between employers and employees in Sarawak since 1952. Over the years this Ordinance had been amended when the need arose with the latest amendments made in 2004. The State administration will continue to explore the need for further amendments to the Ordinance to enhance the existing industrial harmony and human resource development whenever the need arises.

The publication of this book on the Labour Ordinance is very timely given the scenario above where investors, contractors and job seekers, both local and foreign, are working together. This book will help to enlighten all parties concern on the regulations governing the management of workers in the State. This knowledge will result in a harmonious relationship, permitting all parties to focus on productivity and will provide the impetus for Sarawak to achieve a higher level of economic and social development.

The author was a former Director of the Department of Labour Sarawak and on her retirement was attached to our office for a period of five years on an advisory role until her recent decision to become a private consultant on human resources and to realise her desire of producing this book which has now been achieved. From my working with her, she is well versed on the Labour Ordinance and this book should be of useful assistance to all employers and employees.

I wish her good luck and every success in her new undertaking.



Tan Sri Datuk Amar Haji Mohamad Morshidi Bin Abdul Ghani
STATE SECRETARY SARAWAK

Preface

The focus of this guide is on the provisions of the Labour Ordinance of Sarawak (Sarawak Cap. 76). This Guide lays out the provisions in the Labour Ordinance of Sarawak as well as other related laws that have an impact on employment in Sarawak. It is not intended to be authoritative or with legal backing, but it tries to provide the interpretation of the author through her experience and knowledge acquired from her years of public service.

The Labour Ordinance of Sarawak (Sarawak Cap 76) covers a wide range of topics, but references on a certain topic may be scattered throughout the legislation. Thus the author consolidates each subject into a specific chapter under specific sub-headings so that each topic covered in the Guide is complete by itself. There is also input on the author's interpretations of the rationale behind some of the said provisions so that the matter can be more easily understood.

Included in this Guide are the subsidiary legislation made under the Labour Ordinance of Sarawak as well as the Minimum Wages Order 2012 and the Minimum Retirement Age Act 2012 in the Appendices for reference by the reader.

Employees can refer to the book to update themselves on the provisions of the Labour Ordinance of Sarawak and whenever they face any employment issues at the workplace.

As many of the companies in Sarawak are small enterprises, they may not have any dedicated human resources personnel. As such, it is hope that they will be able to use this book as a first reference to any question that they may have on managing their employees. Subsequent discussions with officers of the Department of Labour and those from other government agencies may be necessary to obtain updates on any further amendments to the relevant laws and to check whether there are more recent case laws which may have legal implications on any of the matters discussed.

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INTRODUCTION

1. Background of the Department of Labour Sarawak

- a. The department was set up on 26 July 1960 with a strength of 6 staff. This was a response to the increasing need for labour in industries at that time. The Department of Labour Sarawak came under the wings of the Ministry of Labour Malaysia (as it was then called) with the formation of Malaysia.
- b. Based on the recommendations of the Inter-Governmental Committee Report 1962, the Commissioner of Labour Sarawak, currently re-designated as the Director of Labour Sarawak, reports to the Honourable Minister of Human Resources Malaysia through the Secretary General of the Ministry of Human Resources with regards to the administration and enforcement of labour laws in Sarawak.
- c. By 1967, the Department of Labour Sarawak had taken over all the duties on labour matters from the District Offices throughout Sarawak. Initially, the department implemented all the Government policies and laws relating to employment, labour and industrial relations for the State of Sarawak. The legislation enforced and implemented in Sarawak by the Department of Labour over the years, are as follows:

No.	Laws	Effective Date
1	*Labour Ordinance (Sarawak Cap. 76)	1 st July 1952
2	*Weekly Holidays Ordinance (Sarawak Cap. 79)	2 nd January 1956
3	Workmen's Compensation Ordinance (Sarawak Cap. 80) ¹	1 st January 1957
4	*Workmen's Compensation Act 1952	1 st June 1981
5	Wages Council Act 1947 ²	1 st January 1965
	Wages Regulations Order (Sarawak) Shop Assistants 1972 ³	1 st November 1972
	Wages Council (Wages Regulation Order) (Statutory Minimum Remuneration of Private Security Guards in Sarawak and Sabah) Order 2011 ⁴	1 st August 2011

¹ Repeal and replaced by Workmen's Compensation Act 1952 on 1st June 1981

² Repealed & replaced by the National Wages Consultative Council Act 2011 effective 15th September 2011

³ Revoked with effect from 1st January 2013 and replaced by Minimum Wages Order 2012

⁴ Revoked with effect from 1st January 2013 and replaced by Minimum Wages Order 2012

6	*Employment Information Act 1953	2 nd March 1967
7	Trade Union Act 1959	19 th August 1965
8	Industrial Relations Act 1967	7 th August 1967
9	*Internal Security (Labour Registration) Regulations 1960	4 th August 1977
10	**Employment Restriction Act 1968	1 st July 1968
11	*Private Employment Agencies Act 1981 ⁵	19 th February 2003
12	*Anti-trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (Act 670)	1 st October 2007
13	*National Wages Consultative Council Act 2011 (Act 732)	15 th September 2011
	*Minimum Wages Order 2012	1 st January 2013 (<i>more than 5 employees & professional services</i>); and 1 st July 2013 (<i>5 or less employees</i>)
14	*Minimum Retirement Age Act 2012	1 st July 2013

- d. When the Employees' Social Security Act 1969 was first implemented in Sarawak, the duties were administrated by the Department of Labour Sarawak. The Social Security Organisation became a separate entity in Sarawak when its first office in Kuching was set up in July 1973.
- e. The registration and administration of trade unions in Sarawak was originally under the purview of the Department of Labour Sarawak. In 1977, it was decided that a separate entity was to be set up to take care of such matters in Sarawak. It is now known as the Department of Trade Union Affairs Sarawak reporting directly to the Director General of the Department of Trade Union Affairs in Putrajaya, Malaysia.
- f. On 1st January 1980, the Department of Manpower Malaysia under the Ministry of Human Resources Malaysia set up an office in Kuching and took over the Employment Division from the Department of Labour Sarawak. Thus the registration and placement of job seekers came under the purview of the new department. However, this responsibility reverted back to the Department of Labour Sarawak on 19th February 2003.

⁵ Previously enforced by Department of Manpower

* Laws currently administered and enforced by Department of Labour Sarawak

** Not enforced since 15th October 1991

- g. Industrial relations matters in Sarawak came under the Department of Labour Sarawak when the Industrial Relations Act 1967 was first enforced in 1967. A separate division of the Industrial Court was set up in Kuching on 16 February 1995 to adjudicate on matters arising from Sabah and Sarawak. Eventually a division of the Industrial Court was set up in Sabah. As of 11st March 2003, the Industrial Court Sarawak only hears cases from Sarawak.
- h. On 24th November 2004, an office of the Department of Industrial Relations was set up in Sarawak under the administration of a State Director. This new office, located in Kuching, deals with all cases under the Industrial Relations Act 1967 from throughout Sarawak and the officers report directly to the Director General of Industrial Relations in Putrajaya, Malaysia.
- i. The Department of Labour Sarawak, with its headquarters in Kuching, has established offices at the Divisional and District level to bring its services closer to members of the public. Presently it has 16 Divisional and District Offices throughout the State:

Labour Office	Date Set Up
Kuching	1 st January 1969
Sibu	1 st January 1972
Miri	1 st January 1972
Limbang	1 st May 1973
Sri Aman	1 st January 1974
Kapit	1 st March 1974
Sarikei	5 th August 1974
Bintulu	1 st July 1979
Marudi	1 st April 1986
Serian	29 th December 1989
Bakun/Sungei Asap	1 st June 1997
Kota Samarahan	16 th September 2009
Saratok	16 th December 2009
Lawas	16 th December 2009
Mukah	4 th January 2010
Jobs Malaysia Centre, Kuching	25 th January 2010
Betong	14 th June 2010

- j. With the establishment of its network of offices in 17 locations, including the Jobs Malaysia Centre in Kuching, the total staff strength of the department has increased to 275⁶, arising from the approval by the Public Services Department in 2007.
- k. Over the past 53 years, the Department has developed under the administration and tutelage of nine Directors of Labour:

No.	Name	Period
1.	Mr. James Stirling	1960-1962
2.	Mr. H. J. Cheeseley	1962-1964
3.	Mr. Foo Teck Yen	1964-1967
4.	Mr. Tan Beng Siong ABS, PTJ	1968-1980
5.	Mr. Anthony Polycarp Munjan PPS	1983-1998
6.	Haji Hashim Bin Ariffin KMN, PIS	1998-2003
7.	Mdm Tan Gake Hua PBK	2003-2007
8.	Haji Mohd Zubir Bin Mohd Basri KMN, AMN	2007-2011
9.	Mr. August Buma PBK, JSM	Since 2011 to present

2. Labour Ordinance of Sarawak (enforced effective 1st July 1952)

- a. The Labour Ordinance of Sarawak (*Sarawak Cap 76*) (hereafter referred to as SLO) is a social legislation intended to provide the minimum terms and conditions of employment for employees in Sarawak. It was first enforced on 1st July 1952 as the Labour Ordinance (*Cap. 76 of the Laws of Sarawak*), enacted when Sarawak was a British colony. In view of this background, case laws based on British decisions and the Commonwealth on the same matters can be referred to and used as a guide to clarify matters under dispute in the SLO.
- b. Under the Report of the Inter-Governmental Committee 1962, it was decided that the labour laws in Sarawak *"should remain in force when Malaysia is established and when necessary, there should be a gradual move towards a common form of Malaysian legislation"* for the country. It also provided that *"there should be a delegation of powers to make subsidiary legislation to deal with conditions peculiar to the State"*. It is on this premise that the SLO was amended in 2004 and was not repealed to be replaced with the Employment Act 1955 (hereafter referred to as EA) which is applicable in Peninsular Malaysia.

⁶ Annual Report of Department of Labour Sarawak 2011

- c. Several amendments were made to the SLO since its implementation in 1952. The amendments immediately prior to 2004 were made in 1964 through the Modification of Laws Act when Malaysia was formed. Thus the SLO became a federalised law.
- d. Numerous discussions were held from the 1980's to amend the SLO. There were two possible options, one was to amend the SLO to incorporate some of the more beneficial provisions of the EA into the SLO and the other was to abolish it completely and to replace it with the extension of the Employment Act 1955 to Sabah and Sarawak. The choice of one or the other was deliberated at different times since the 1980's. Finally, the decision was made to implement the first option, which was to incorporate the better provisions of the EA into the SLO and at the same time to retain those provisions in the SLO that are considered to be better than those in the EA or are considered unique to Sarawak. Finally in December 2004 the amendments to the SLO were passed by Parliament and received the Royal Consent on 2nd February 2005 and gazetted on 10th February 2005. The amended SLO was enforced with effect from 1st October 2005.
- e. The main reasons for the amendments were:
 - i. to ensure that the employees in Peninsular Malaysia, Sabah and Sarawak enjoy similar benefits;
 - ii. to delete provisions that were no longer considered necessary or are covered under other legislation;
 - iii. to update provisions suitable to the current labour scenario; and
 - iv. to streamline and strengthen enforcement by officers of the Department of Labour Sarawak as well as improving the delivery system of the Department.
- f. With the amendments, the major changes made to the SLO were:
 - i. Extending the coverage of the SLO to non-manual employees whose monthly wages is RM2,500 and below, while retaining the existing coverage to manual employees and other relevant employees irrespective of the amount of wages. It should be noted that the limit of RM2,500 is more than those in the EA which was RM1,500 per month at that time. (The coverage of the EA has since been amended to RM2,000 per month⁷).

⁷ P.U.(A) 88/2012)

- ii. Provides new conditions of employment such as the provisions of annual leave, sick leave and termination and layoff benefits.
 - iii. Provides the procedure for the Director's Inquiry through the Labour Court in cases of disputes over wages or other payment in cash between employers and employees.
 - iv. The Minister of Human Resources is to consult the State Authority of Sarawak before making any rules under the SLO.
 - v. Improved terms and conditions of employment such as the period of maternity leave for female employees.
 - vi. To provide better rates of payment in respect of extra work performed on rest days and paid holidays.
 - vii. Deletion of some provisions deemed no longer necessary such as the attestation of contract of service by Labour Officers and the need for medical examination upon the signing of the contract of service.
 - viii. The exclusion of employees in the government, statutory bodies and local authorities from the provisions of the SLO through amendments to the definition of "employer".
- g. The preamble to the SLO as "*An Ordinance to make better provisions in the law relating to labour*" is retained. This is in line with the intents and purposes of the various conventions of the International Labour Organisation (ILO) which had been ratified by Sarawak (prior to 1963) and by Malaysia. The ratification of the ILO conventions has put the onus on the country to implement the provisions of the conventions through their inclusion in its labour laws.

3. Labour Ordinance of Sabah (enforced effective 1st January 1950)

Originally, the provisions of the SLO and those in the Sabah Labour Ordinance were very similar, with differences only in terms of the numbering of the sections due to the exclusion of section 5 on the notification of accidents from the Sabah SLO, the number of holidays entitlement and in the different rules made thereunder. After the amendments in 2004, these differences were retained including the number of holiday entitlement (16 in Sarawak and 14 in Sabah for full-time employees) and the number of days under Guaranteed Week (5½ days for Sarawak and 6 days for Sabah) in view of historical differences and the Government's policy not to reduce the existing benefits of employees in the amendments.

4. Employment Act 1955

As the SLO incorporated many of the benefits found in the Employment Act 1955, this Guide can also be referred to by employers and employees in Peninsular Malaysia. However, the number of holidays differs as employees there are entitled to 11 paid holidays under the Employment Act 1955. Case laws established under the Employment Act can also be used as references when dealing with issues or matters under the SLO. However, Chapter 12 on Repatriation is not applicable to Peninsular Malaysia as the EA does not have any provision on this matter.

5. Employment of Non-resident employees

Due to the established systems and procedures for the employment of non-resident employees and foreign employees in Sarawak, Sabah and in Peninsular Malaysia as well as the provisions concerning the power of the State Authority in Sabah and Sarawak under the Immigration Act 1959/1963, the procedure and policy on the employment of these workers are different for the three regions. While the provisions on non-resident employees are similar in the Labour Ordinances for Sabah and Sarawak, the actual administration of the employment of these non-residents differs in Sabah due to historical and economic reasons. As such, the procedures and policy in Chapter 11 only deals with the current system in Sarawak.

1. COVERAGE OF LABOUR ORDINANCE OF SARAWAK

1.1. The Labour Ordinance of Sarawak (SLO) covers two categories of employees in the private sector in Sarawak. Both categories are entitled to the minimum terms and conditions provided in the SLO. The two categories⁸ as listed under the Schedule to the SLO are:

- a. Employees, irrespective of their occupation who have entered into a contract of service with an employer and whose wages do not exceed RM2,500 per month.
- b. Employees, irrespective of the amount of wages earned in a month who have entered into a contract of service with an employer and are:
 - i. engaged in manual labour, including artisans and apprentices;
 - ii. engaged in the operation and maintenance of mechanically propelled vehicle used for the transport of passengers or goods or for commercial purposes;
 - iii. supervisors of manual workers in and throughout the performance of their work;
 - iv. engaged in recruiting employees;
 - v. engaged in vessels and who are not certificated under the merchant shipping laws of the United Kingdom and Malaysia; and
 - vi. engaged as domestic servants.

To assess whether an employee is within the purview of the SLO, it is necessary to know his monthly wages. If his wages is RM2,500 and below, then he is entitled to the minimum benefits of the SLO. Should his wages exceed RM2,500, then it is necessary to examine whether he comes under any of the occupations as listed in category (b) above. If he can be classified under any of the occupations in category (b), then he is covered by the SLO although his wages are more than RM2,500 per month.

1.2 Employees who do not come under the two categories in paragraph 1.1 above and their monthly wages are between RM2,501 to RM5,000⁹ also have the option to obtain the assistance of the Department of Labour when they have disputes over wages or other cash payments as contained in their contract of service. However, employees earning above RM5,000 per month will have to seek redress over any dispute over their terms and conditions of employment in the civil courts.

1.3 To determine whether a person is an employee under the SLO in respect of paragraphs 1.1(a) and 1.2 above, "wages" is as defined under Section 2 of the SLO but does

⁸ SCHEDULE of the Labour Ordinance of Sarawak

⁹ Section 8C

not include commission, subsistence allowances and overtime payments. The definition of wages is discussed in paragraph 3.5.

1.4 The Schedule of the SLO also provides that certain provisions of the SLO are not applicable to some categories of employees:

- a. Employees in vessels who are in category 1.1(b)(v) above who are certificated under the merchant shipping laws, are not entitled to the protection of the following provisions: the definition of "ordinary rate of pay", section 104 (holidays), 105 (hours of work), 105A (shift work), 105B (rest day), 105C (work on a rest day), 105D (annual leave), 105E (sick leave), and subsection (2) of section 106 (payment of wages based on task). This is because these merchant shipping legislation have specific provisions on these matters and the certificated employees are subjected to the terms provided therein.
- b. While "Domestic Servant" comes within the purview of the SLO, many of the benefits are not applicable to them. The details are dealt with in Chapter 8 on the employment of domestic servants.

1.5 For those under the purview of paragraph 1.1(a) above, the Minister of Human Resources has exempted the following employees from certain sections of the SLO with effect from 1st October 2005:

"All non-manual, executive and managerial employees whose wages are between RM2,001 and RM2,500... shall be exempted from sections 104, 105, 105A and 105C"¹⁰"

1.6 The impact of the exemption given in paragraph 1.5 above, results in these employees being excluded from the provisions of the SLO on paid holidays, hours of work, shift work and work on a rest day. However these employees will be entitled to these four (4) benefits if the benefits are provided for in their contracts of service. Similarly, if they are required to work on these paid holidays, the employees will not be entitled to extra pay unless their contract provides specifically for its payment.

1.7 **Meaning of "Manual labour"**

Based on the definition of "employee", anyone who is engaged in "manual labour", irrespective of the amount of wages is covered under the SLO. Thus the question of whether an employee is engaged in manual labour is important as its interpretation can cover a whole spectrum of employees who will be entitled to the statutory benefits under the SLO. There are as yet no case laws on this issue under the SLO.

- a. However, there are case laws under the Employment Act 1955, Industrial Relations Act 1967 and cases dealt with under the British employment laws on this issue.

¹⁰ P.U. (A) 376 dated 30th September 2005.

- b. Based on these case laws, the following principles are applicable when deciding whether an employee is engaged in manual labour or not:
 - i. A distinction must be drawn between manual labour and manual work. Manual labour is manual work which requires toil and effort. This distinction was made by Lord Esher MR in *Bound v Lawrence* as follows-
“There can be no manual labour without the use of hands, but it does not follow that every use of hands is manual labour, so as to make the person who does it a manual labourer”.
 - ii. A distinction has to be made between physical exertion as opposed to mental/intellectual effort. This is expounded in the High Court case *Colgate Palmolive Sdn Bhd vs Cheong Foo Weng & 12 Others* where the Court draws a distinction between work that is purely physical in nature and those that has physical content but is really dependent on skill, intelligence, mind, knowledge or experience. The latter is not engaged in “manual labour”.
 - iii. One has to look at the main duties performed by the employee and whether the employee performs manual labour as his main duties, constituting a substantial part of his duties or are they only incidental or accessory to the performance of his job. The claimant will thus have to bring proof based on his duties.
 - iv. The nature of every job is different and a decision has to be based on the facts of each particular case. One cannot just depend on the job specifications as provided in the contract of service as the actual work performed may be different.

1.8 In respect of an employee performing both manual and non-manual labour work, the SLO states in the proviso to paragraph 2(a) of the Schedule that such a person would be deemed to be involved in manual labour if he spends more than 50% of his working time in any one wage period doing manual labour.

1.9 **Meaning of “Employee”**

- a. There are many layman interpretations on who is considered an “employee”. Many people do not consider a daily rated worker, a “contract worker”, a part time worker or a person who is paid based on tonnage/piece rate as an employee.
- b. This view is not correct as any one who works under a contract of service irrespective of the mode of payment and are within the definition in paragraph 1.1, is an employee under the SLO. What constitutes a contract of service is explained in detail in the next chapter.

2. CONTRACT OF SERVICE

Where a **contract of service** exists, it does not matter how the person is paid, whether on a monthly, daily or on a piece rate basis. They are all entitled to the benefits of the SLO so long as they are “employees” as provided in the Schedule of the SLO, as explained in paragraph 1.1 above.

2.1 Definition

- a. A contract of service is defined by the SLO as:
“any agreement, whether oral or in writing and whether expressed or implied whereby one person agrees to employ another as an employee and that other agrees to serve his employer as an employee and includes an apprenticeship contract”.
- b. It is necessary to note that a contract of service would exist even when there is no written document signed by either party to the contract. The contract of service is presumed to exist when the parties behave in such a way as to imply that there is an employer and employee relationship.

2.2 Contract of service and contract for service

- a. There are case laws under the EA on the issue whether a contract of service or a contract for service exists between any two parties. Various criteria or a combination of the following criteria have been used to determine whether a contract of service exists:
 - i. The degree of control of the employer over the employee, that is, there is a “master and servant” relationship. This can be seen from the terms of the contract, the conduct of the parties and the duties and functions of the person. The employer would have control as he determines what an employee is to do, how he is to do the job and the manner he is to perform his work. The “employee” cannot delegate his duties to other people as he likes. However with the present level of skills and technology used in the work place, control may not be the only criteria to determine whether a contract of service exists.
 - ii. Whether the person is an integral part of the business and not only as an accessory to the organization, should also be taken into account.
 - iii. Whether the person performs the service as a person in business on

his own account (entrepreneurial test) and is also liable for the profit and loss of his business with responsibility for its management and investment needs to be examined.

- iv. A multiple factor test of all the above may be necessary if the degree of control is too weak to decide whether there is a contract of service. Thus all aspects of the relationship have to be examined, including the right of dismissal.

b. Three elements are present in a contract of service:

- i. one person/servant agrees to provide his work, skill and ability to perform certain work for the other person in return for a wage and/or other remuneration;
- ii. he agrees to perform his service under the control of a sufficient degree of the other person (in terms of what is to be done, how it is to be done and the time and place to do it); and
- iii. the terms of the other matters in the contract are consistent with a contract of service. However, each case will have to be studied based on the facts in each situation to determine the true relationship between the two parties.

c. The contract of service may be expressed or implied. Expressed contract are terms that are spelled out and made known to the employee. However, a contract of service also includes implied terms, such as loyalty to the company or that the employee will not work for other employers while accepting wages from the organization.

d. Thus a contract between an employer and an employee is deemed to be a contract of service. In such a contract, there is a "master and servant relationship" between the employer and the employee. The employee is under the control of the employer or his representative in respect of what he is to do and how the work is to be done and he is not at liberty to do as he likes. While technical work may not have much direct supervision by the employer, this does not take away the fact that there is a master and servant relationship. Thus the employer is not absolved of his responsibilities toward his employees as provided in the SLO.

e. On the other hand, a contract **for** service refers to the contract with an independent contractor. In such an arrangement, there is no master and